

**REMARKS/ARGUMENTS**

1. In the above referenced Office Action, the Examiner indicated that this application contains claims directed to the following patentable distinct species of the claimed invention:

Species I drawn to figures 1-3;

Species II drawn to figures 4, 5A, 5B, 6A, and 6B;

Species III drawn to figure 5;

Species IV drawn to figure 7A and 7B; and

Species B drawn to figure 8.

The applicant is aware of the obligation to elect a single species for prosecution on the merits, however, the Examiner's species classification based on the figures, which illustrates embodiments of the claimed invention. Nevertheless, the applicant provisionally elects claims 1-9, 16-21, and 28-31, but requests the Examiner to withdraw the restriction for the reasons below.

In addition, if the Examiner rejects the applicant's request for withdrawal of restriction, then the applicant requests that the Examiner make the restriction final so that the applicant may petition the Director under 37 CFR 1.144.

37 CFR § 1.142 (Requirement for restriction)

(a) If two or more independent **and** distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will

normally be made before any action on the merits; however, it may be made at any time before final action.

(b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

#### MPEP 802.01 Meaning of "Independent" and "Distinct" (in part)

35 U.S.C. 121 quoted in the preceding section states that the Commissioner may require restriction if two or more "independent and distinct" inventions are claimed in one application. In 37 CFR 1.141, the statement is made that two or more "independent and distinct inventions" may not be claimed in one application.

This raises the question of the subjects as between which the Commissioner may require restriction. This, in turn, depends on the construction of the expression "independent and distinct" inventions.

#### INDEPENDENT

The term "independent" (i.e., not dependent) means that there is **no disclosed relationship** between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process.

#### DISTINCT

The term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this definition the term related is used as an alternative for dependent in referring to subjects other than independent subjects.

# MPEP 803 Restriction - When Proper (in part)

## CRITERIA FOR RESTRICTION BETWEEN PATENTABLY DISTINCT INVENTIONS

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).

## MPEP 806 Determination of Distinctness or Independence of Claimed Inventions

The general principles relating to distinctness or independence may be summarized as follows:

(A) Where inventions are independent (i.e., no disclosed relation therebetween), restriction to one thereof is ordinarily proper, MPEP § 806.04 -§ 806.04(i), though a reasonable number of species may be claimed when there is an allowed (novel and unobvious) claim generic thereto. 37 CFR 1.141, MPEP § 809.02 -§ 809.02(e).

(B) Where inventions are related as disclosed but are distinct as claimed, restriction may be proper.

(C) Where inventions are related as disclosed but are not distinct as claimed, restriction is never proper.

Where restriction is required by the Office double patenting cannot be held, and thus, it is imperative the requirement should never be made where related inventions as claimed are not distinct. For (B) and (C) see MPEP § 806.05 -§ 806.05(i) and § 809.03. See MPEP § 802.01 for criteria for patentably distinct inventions.

The present patent application includes 6 independent claims and a total of 37 claims. Claim 1 has dependent claims 2-8, claim 10 has dependent claims 11-15, claim 16 has dependent claims 17-21, claim 22 has dependent claims

23-27, claim 28 has dependent claims 29-31, and claim 32 has dependent claims 33-37.

Independent claims 1, 16, and 28 are directed towards apparatus for transporting a container, a plurality of containers, and for carrying a vase of flowers, respectively. Each of independent claims 1, 16, and 28 include a base, a retaining section, and a brace. While these claims may be distinct (i.e., patentable over one another), they are not directed towards independent inventions since there is only one subject disclosed; that being an apparatus for transporting one or more containers, which includes a vase of flowers. As defined in MPEP 802.01, "independent inventions" means that there is **no disclosed relationship** between the two or more subjects disclosed.

Independent claims 10, 22, and 32 are directed towards a system for transporting a plurality of containers, or vases of flowers. Each of these independent claims includes a plurality of transporting apparatuses and a support structure, where the transporting apparatuses relates to one or more of independent claims 1, 16, and 28. While independent claims 10, 22, and 32 may be distinct (i.e., patentable over one another), they are not independent of each other or of claims 1, 16, and 28. In particular, only one subject is disclosed for the present invention, that being transporting containers, which may be done in a system. As stated in MPEP 802.01 The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design,

operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process.

Based on the foregoing reasons, the applicant requests that the Examiner withdraw the restriction requirement.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF MAILING

37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Alexandria, Virginia 22313, on the date below:

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Signature

Niane Hudson